IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 179 OF 2000

The State of Maharashtra ..Appellants

versus

Mrs. Shanta Malhar Divan ..Respondent

Mr. S. N. Gawade for the Appellants.

Ms. A.R.S. Baxi for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 22ND MARCH,2005

ORAL ORDER :

1. Heard learned AGP for the Appellants - State and learned counsel for the Respondent.

2. This Appeal is filed by the State challenging the award of the Reference Court. Land admeasuring 32R (out of which 4 R was barren land), from Gat No. 577 situate at Mahisal was acquired by the Government for the purpose of Krishna Koyana Lift Irrigation Scheme. The SLAO awarded compensation at the rate of Rs.50,000/- per hectare for 28R of land and Rs.200/- per hectare for the barren land.

3. Dissatisfied by the said Award, the claimant filed a Reference claiming Rs.90,000/- per hectare. The Reference Court awarded the compensation at the rate asked for by the claimant and therefore this Appeal by the State.

4. Learned AGP contended that the sale instances taken into consideration by the court in favour of the claimant were subsequent to the notification under Sction 4 and as such those instances should not have been relied upon. The date of notification under Section 4 is 3.2.1990 and the sale instances relied upon by the Reference Court are dated 4.5.1990 and 23.7.1990. I find considerable force in the submissions and it has to be accepted.

5. However, learned Counsel for the claimant - respondent contended that there were 14 sales instances before the SLAO. The price ranging therein were from Rs.1,034/- to Rs.55,555/- per hectare. Acquired land was irrigated land as was clear from the report of the SLAO and therefore award of compensation at Rs.90,000/=- per hectare by the Reference Court was proper.

6. What the Reference Court did referred to the aforesaid prices ranging from Rs.1,035/- to

Rs.55,555/- and then fixed the price of Jirayat land at Rs.60,000/- in 1990 and then fixed the price of the irrigated acquired land at Rs.90,000/- per hectare being 1 1/2 price of the jirayat land. In fact there was no basis for fixing the price at Rs.90,000/-. From the report of the SLAO, it is clear that Rs.55,555/- was the price of the irrigated land. The sale instances in that regard was of 1988 and therefore the basis for fixation of compensation should have been the maximum price between the price ranging i.e. Rs.55,555/- per hectare and this was the price in 1988. The acquisition is of 1990. Therefore, claimant would have been entitled to 10% increase in the price and the price therefore comes to Rs.66,000/- per hectare i.e. the compensation that the claimant is entitled to, and not Rs.90,000/- per hectare.

7. Counsel for the claimant also contended that though the claimant has failed to adduce any evidence about the expenditure incurred by him for laying pipeline in his field, the report of the SLAO was sufficient to come to the conclusion that the substantial amount was spent by the claimant for the said purpose. She therefore contended that on the basis of the report of the SLAO the claimant should be awarded compensation for the pipeline.

8. It is true that SLAO has taken into consideration that the claimant has laid pipeline in his field. But the legal obstacle in the way of the claimant is that the claimant has not filed any cross appeal. This appeal filed by the State is challenging the enhancement and though claimant can challenge a particular finding, granting relief as prayed would be beyond the scope of the appeal. Therefore that prayer of the counsel for the claimant cannot be accepted. Consequently, this appeal is required to be partly allowed in the following manner:

ORDER

. Appeal is partly allowed.

. Compensation fixed by the Reference Court at Rs.90,000/- per hectare is reduced to Rs.66,000/- per hectare. The rest of the amount of interest and solatium is maintained but it will come down automatically in view of the compensation fixed at Rs.66,000/- per hectare. In the circumstances there will be no order as to costs.

22.03.2005 (D.G. DESHPANDE, J.)